

INDUSTRIAL ARBITRATION (AMENDMENT) ACT.

Act No 25, 1943.

George VI.
No. 25, 1943.

An Act to provide for the appointment of not more than five conciliation commissioners; for this and other purposes to amend the Industrial Arbitration Act, 1940, as amended by subsequent Acts; and for purposes connected therewith. [Assented to, 21st October, 1943.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title,
citation
and com-
mencement.**

1. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1943."

(2) The Industrial Arbitration Act, 1940, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Industrial Arbitration Act, 1940, as amended by subsequent Acts and by this Act, may be cited as the Industrial Arbitration Act, 1940-1943.

(4) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

**Amendment
of Act No.
2, 1940.**

**Sec. 5.
(Defini-
tions.)**

2. The Principal Act is amended—

(a) (i) by omitting from the definition of "Employee" in section five the words "or any vehicle used in the delivery of goods," and by inserting in lieu thereof the words "or as an outworker, or is working as a salesman, canvasser, collector, commercial traveller

traveller, insurance agent or in any other capacity in which he is paid wholly or partly by commission"; No. 25, 1943.

(ii) by inserting after the definition of "Minister" in the same section the following new definition:—

"Outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired or adapted for sale, in his own home or on other premises not under the control or management of the person who gives out the materials or articles. cf. Act No. 15, 1926, s. 6 (1).

(iii) by inserting at the end of the same section the following new subsections:— cf. *Ibid.* s. 6 (11).

(2) A person who is engaged in plying for hire or in the delivery of goods with any vehicle or vessel the use of which is obtained by that person under a contract of bailment (other than a hire purchase agreement) in consideration of the payment of a fixed sum or a share in the earnings or otherwise shall, where the work in which such person is so engaged is work for which, by an award or industrial agreement, a price or rate has been fixed for persons performing such work, be deemed, for the purposes of this Act, to be an employee employed by the person from whom the use of the vehicle or vessel is so obtained, and such last mentioned person shall, for the purposes of this Act, be deemed to be the employer of such employee unless such persons or either of them establishes to the satisfaction of the tribunal in which proceedings for a breach of the award or industrial agreement are instituted that the contract of bailment was a bona fide contract and was not entered into for the purpose of avoiding the operation of the award or industrial agreement.

(3)

No. 25, 1943.cf. Act No.
15, 1926,
s. 6 (5) (b).

(3) (a) Where any person (in this subsection referred to as "the principal") advertises or otherwise notifies that he will accept timber delivered or supplied to him or his agent or other person in accordance with such advertisement or notification or advertises or otherwise notifies to the abovementioned effect and any person (in this subsection hereinafter referred to as the "contractor") gives notice to the principal that he will deliver or supply such timber or any part thereof, then except where the principal forthwith notifies the contractor in writing that his offer to accept timber so delivered or supplied has been withdrawn, the contractor, whilst engaged in or about the work of cutting, delivering or supplying such timber or part thereof shall, for the purposes of this Act, be deemed to be an employee employed by the principal, and the principal shall, for the purposes of this Act, be deemed to be the employer of such contractor.

Notice of intention to deliver or supply timber as aforesaid shall be in or to the effect of the prescribed form and shall indicate the nature of the actual work to be undertaken and also the locality where and the time within which the actual work is to be carried out.

The notice may be given personally or by letter posted to the principal at his place of business or usual address.

(b) For the purposes of this subsection:—

"Timber" includes sleepers, piles, poles, girders, logs or pit timber;

"Cutting" includes felling, sawing, obtaining, preparing or doing any work in connection with timber.

(b) by omitting the proviso to subsection three of section eight.

3.

3. The Principal Act is further amended— No. 25, 1943.

(a) (i) by omitting from subsection seven of section fourteen the words "the conciliation commissioner" where firstly occurring and by inserting in lieu thereof the words "a conciliation commissioner"; Further amendment of Act No. 2, 1940. Sec. 14. (Industrial commission.)

(ii) by omitting from the same subsection the words "The conciliation commissioner, committee, or" wherever occurring and by inserting in lieu thereof the words "A conciliation commissioner or committee or the";

(b) by omitting from subsection ten of the same section the word "commissioner" and by inserting in lieu thereof the word "commissioners";

(c) by inserting at the end of the same section the following new subsection:—

(13) Where any question or application is referred or any appeal is made to the commission under this Act, the commission may, before proceeding with the hearing of such question, application or appeal, call a conference of the parties with a view to effecting a settlement of the matters in dispute.

At such conference the members of the conciliation committee established for the industry or calling concerned shall, if the commission so directs, sit with the commission.

4. (1) The Principal Act is further amended— Further amendment of Act No. 2, 1940. Sec. 15. (Conciliation commissioner.)

(a) (i) by omitting subsection one of section fifteen and by inserting in lieu thereof the following subsections:—

(1) The Governor may appoint not more than five persons each of whom shall be a conciliation commissioner, and may appoint one of the conciliation commissioners to be the senior conciliation commissioner.

(1A) (a) The conciliation commissioners, other than the senior conciliation commissioner, shall have seniority according to the dates

No. 25, 1943.

dates of their appointments, or, where the appointments of two or more of them were made on the same date, according to such order of precedence as may be assigned to them by the Governor.

(b) In the case of the absence of the senior conciliation commissioner or of his inability to perform the duties of his office or in the case of any vacancy in the office of senior conciliation commissioner, all the duties and powers of the senior conciliation commissioner shall devolve upon the conciliation commissioner who is next in order of seniority.

(1B) A conciliation commissioner shall be chairman of each committee.

The commission shall, from time to time, determine the committees of which each conciliation commissioner is to be chairman.

(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:—

(2) Each conciliation commissioner shall be paid such salary as the Governor may determine.

(iii) by omitting from subsection three of the same section the word "The" and by inserting in lieu thereof the word "A";

(iv) by omitting from subsection four of the same section the word "The" where firstly occurring and by inserting in lieu thereof the word "A";

(v) by omitting from paragraph (b) of the same subsection the words "The commissioner suspended" and by inserting in lieu thereof the words "A conciliation commissioner suspended";

(vi) by omitting from the same paragraph the words "the commissioner" wherever occurring and by inserting in lieu thereof the words "such conciliation commissioner";

(vii)

- (vii) by omitting from subsection five of the same **No. 25, 1943.** section the word "The" where firstly occurring and by inserting in lieu thereof the word "A";
- (viii) by omitting subsection six of the same section;
- (ix) by inserting next after subsection seven of the same section the following new subsection:—

(8) Where an officer of a Crown corporation is appointed a conciliation commissioner he shall be entitled to have his service as conciliation commissioner reckoned as service for the purposes of the Act or regulations governing his service as such officer, and if, as such officer, he was an employee within the meaning of the Superannuation Act, 1916, as amended by subsequent Acts, he shall, while he holds office as conciliation commissioner, be deemed to be an employee within the meaning of the said Act, as so amended. Upon the termination of his appointment as conciliation commissioner, if he has not already attained the age of sixty-five years, he shall be entitled to be reappointed to the service of the Crown corporation in some position corresponding in classification and salary to that which he held at the date of his appointment as conciliation commissioner.

In this subsection the expression "Crown corporation" means any of the following corporations, that is to say:—The Commissioner for Railways, the Commissioner for Road Transport and Tramways, the Commissioner for Main Roads, the Metropolitan Meat Industry Commissioner, the Maritime Services Board of New South Wales, the Metropolitan Water, Sewerage and Drainage Board, the Water Conservation and Irrigation Commission, the Board of Fire Commissioners of New South Wales, the Hunter

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Hunter District Water Board, and the Hospitals Commission of New South Wales.

Sec. 16.
(Additional conciliation commissioners.)

(b) by omitting from section sixteen the words "the conciliation commissioner" wherever occurring and by inserting in lieu thereof the words "a conciliation commissioner";

Sec. 18.
(Conciliation committees.)

(c) (i) by inserting next after subsection one of section eighteen the following new subsection:—

(1A) (a) In the establishment of a committee no exception shall be made from the industry or calling or combination, arrangement or grouping of industries or callings for which the committee is established, which will have the effect of excluding the employees of any one or more specified employers or any one or more specified groups of employers engaged in such industry or calling or combination, arrangement or grouping of industries or callings, unless such employees are engaged in an industry or calling or combination, arrangement or grouping of industries or callings for which some other committee is established.

(b) Where, in the establishment of any committee which is in existence at the commencement of the Industrial Arbitration (Amendment) Act, 1943, any exception was made which contravenes the provisions of paragraph (a) of this subsection, then, as from such commencement, the instrument establishing such committee shall be read and construed as if such exception were omitted therefrom, and the committee shall, after such commencement, be deemed to be established accordingly.

The Minister shall, as soon as practicable after such commencement, make such alterations and amendments of the instrument establishing such committee as may be necessary to give effect to this subsection.

(ii)

(ii) by omitting from subsection two of the same section the words "the conciliation commissioner" and by inserting in lieu thereof the words "a chairman, who shall be one of the conciliation commissioners";

(iii) by inserting in the same subsection after the words "Such representatives" the words and symbols "(in this section hereinafter referred to as 'members')";

(d) (i) by inserting at the end of subsection one of section nineteen the words "The person so appointed shall be one of the conciliation commissioners";

(ii) by omitting subsection two of the same section;

(iii) by omitting subsections seven and eight of the same section.

(2) (a) The persons who immediately before the commencement of this Act held office as the conciliation commissioner and the apprenticeship commissioner respectively shall as from such commencement cease to hold office but each of such persons shall be eligible for appointment under the Principal Act as amended by this Act, as a conciliation commissioner.

(b) If any such person is not so appointed he shall receive such compensation as he would have been entitled to had his services been dispensed with otherwise than according to law.

(3) The Principal Act is further amended by inserting next after section four the following new section:—

4A. (1) After the commencement of the Industrial Arbitration (Amendment) Act, 1943, a reference in any Act, award, industrial agreement, regulation or other instrument whatsoever, to the conciliation commissioner shall be construed as a reference to a conciliation commissioner appointed under section fifteen of this Act (as amended by the Industrial Arbitration (Amendment) Act, 1943).

(2) Any matter pending or part heard before the conciliation commissioner or a committee or an apprenticeship council at the commencement of the

Further amendment of Act No. 2, 1940.

New sec. 4A.

References in Acts, etc., and matters pending.

cf. Act No. 39, 1932, s. 7 (2) (3).

Industrial

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Industrial Arbitration (Amendment) Act, 1943, may be heard or continued before a conciliation commissioner appointed under section fifteen of this Act (as amended by the Industrial Arbitration (Amendment) Act, 1943), or, as the case may be, by a committee constituted in accordance with section eighteen of this Act (as amended by the Industrial Arbitration (Amendment) Act, 1943) or by an apprenticeship council of which the apprenticeship commissioner appointed under section nineteen of this Act (as amended by the Industrial Arbitration (Amendment) Act, 1943) is the chairman.

Further
amendment
of Act No. 2,
1940.
Sec. 20.
(Original
jurisdi-
ction.)

5. The Principal Act is further amended—

- (a) (i) by omitting from paragraph (a) of subsection one of section twenty the words "fifteen pounds" and by inserting in lieu thereof the words "twenty pounds";
- (ii) by omitting from the same paragraph the words "seven hundred and fifty pounds" and by inserting in lieu thereof the words "one thousand pounds";
- (iii) by omitting from the same paragraph the words "the Hunter District Water Supply and Sewerage Board" and by inserting in lieu thereof the words "The Hunter District Water Board";
- (iv) by inserting at the end of the same section the following new subsection:—
 (4) In framing any award granting preference in employment a committee shall have regard to the provisions of the Returned Soldiers and Sailors Employment Act, 1919, as amended by subsequent Acts and shall give a like preference in employment to persons who are competent for the work required and who have been members of the Forces during the war.

In this subsection—

"Auxiliary Service" means Army Medical Corps, Nursing Service of the Crown, Australian Army Medical

Medical Nursing Service, Australian Women's Army Service, Women's Royal Australian Naval Service, Women's Australian Auxiliary Air Force, or such other organisation as the Governor may by proclamation from time to time declare to be an auxiliary service for the purpose of this subsection. **No. 25, 1943.**

“Combat Area” means an area prescribed as such for the purposes of the Australian Repatriation Act, 1920-1943, of the Commonwealth of Australia.

“Enlistment” means an engagement whether by appointment, enlistment or otherwise rendering a person liable to be employed on active service abroad or in a combat area as a member of the Forces or of an auxiliary service.

“Member of the Forces” means any person who was at the time of his enlistment a resident in the Commonwealth of Australia or in a mandated territory of the Commonwealth or in any territory under the jurisdiction of the Commonwealth or who was domiciled in any State of the Commonwealth or in any such territory and who during the war served abroad or within a combat area as a member of any Australian Military Force or of the Royal Australian Naval Forces or as a member of the Royal Australian Air Force or as a member of an auxiliary service and who has been duly discharged from such service.

“War” means the war against Germany which commenced on the third day of September one thousand

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thousand nine hundred and thirty-nine and the subsequent war against Italy and other allies of Germany and the war against Japan.

Save as provided in this subsection nothing contained in this Act shall affect the operation of the Returned Soldiers and Sailors Employment Act, 1919, as amended by subsequent Acts.

Sec. 24.
(Powers of
conciliation
commissioner.)

- (b) (i) by omitting subsections one to six inclusive and subsection ten of section twenty-four;
- (ii) by omitting from subsections seven, eight and nine the words "under this section" wherever occurring;

Sec. 25.
(Compulsory
confer-
ences.)

- (c) by omitting from subsection one of section twenty-five the word "The" where firstly occurring and by inserting in lieu thereof the word "A";

Sec. 26.
(Powers of
conciliation
commissioner.)

- (d) (i) by omitting from section twenty-six the word "The" where firstly occurring and by inserting in lieu thereof the word "A";
- (ii) by omitting from the same section the words "but as assessors only and without vote" and by inserting in lieu thereof the words "and when so sitting they, together with the conciliation commissioner as chairman, shall constitute a committee";
- (iii) by omitting from the same section the words "the conciliation commissioner" where lastly occurring and by inserting in lieu thereof the words "a conciliation commissioner or a committee upon any matter referred under this section";

Sec. 27.
(Decision
of concilia-
tion com-
missioner
final.)

- (e) (i) by omitting from section twenty-seven the words "the conciliation commissioner" wherever occurring and by inserting in lieu thereof the words "a conciliation commissioner or a committee";
- (ii) by inserting in the same section after the words "upon him" the words "or it";
- (iii)

(iii) by omitting from the same section the word **No. 25, 1943.**
"twenty-four" where lastly occurring;

(f) (i) by inserting next after subsection one of **See. 28.**
section twenty-eight the following new (Jurisdiction of
subsection:—
(1A) Without prejudice to the generality
of subsection one of this section the apprenticeship council shall—
(a) determine what facilities are available for the training of apprentices and trainee apprentices in any industry;
(b) where it determines that such facilities are available in any trade, technical or other training school, require that such number of apprentices and trainee apprentices as it may determine, having regard to the facilities available, shall attend thereat for such classes or courses of instruction as may be specified;
(c) where it determines that no such facilities or no sufficient such facilities as are mentioned in paragraph (b) of this subsection are available, but that facilities are available for providing instruction by correspondence or otherwise, require that such number of apprentices and trainee apprentices as it may determine, having regard to the facilities available, shall obtain such instruction as may be specified;
(d) determine that the employer of every apprentice or trainee apprentice required to attend any trade, technical or other training school, shall allow him such time as the apprenticeship council may deem reasonable during ordinary working hours to attend such school;
(e)

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(c) determine that the employer of every apprentice or trainee apprentice who is required to obtain instruction by correspondence or otherwise shall allow him such time as the apprenticeship council may deem reasonable during ordinary working hours for the purpose of taking full advantage of the instruction so obtained.

(ii) by inserting after subsection four of the same section the following new subsection:—

(4A) No employer shall, directly or indirectly or by any pretence or device—

(a) require or permit any person to pay or give; or

(b) demand or receive from any person, any premium, fee, gift, reward, bonus or consideration for entering into any indenture or other contract of apprenticeship (whether with such person or any other person) or for training any employee or prospective employee in any industry without having first obtained the consent of the apprenticeship council for such industry.

Any person who contravenes any provision of this subsection shall be liable, on conviction, to a penalty not exceeding one hundred pounds.

Upon any such conviction the industrial or other magistrate or justices may also make an order directing the employer to refund such premium, fee, gift, reward, bonus or consideration or the value thereof to the person from whom it was received.

6. The Principal Act is further amended—

(a) by omitting from section seventy-five the words “conciliation commissioner” and by inserting in lieu thereof the word “chairman”;

(b) by omitting from subsection one of section seventy-seven the words “Subject to section twenty-four of this Act”;

(c)

further
amendment
of Act No. 2,
1940.

Sec. 75.
(Convening
of meetings
of commit-
tees.)

Sec. 77.
(Evidence
on oath.)

(c) by inserting after section seventy-seven the **No. 25, 1943.**
following new sections:—

77A. The chairman of a committee shall keep notes of the proceedings before such committee, which notes shall be forwarded to the registrar with the committee's award, order or determination.

77B. In every case where an application or reference to a committee is made, it shall be the duty of the chairman to endeavour to bring the parties to an agreement with respect to the matters referred to in such application or reference, and to this end the committee shall, in such manner as it thinks fit, expeditiously and carefully inquire into such matters and anything affecting the merits thereof.

In the course of such inquiry, the chairman may make all such suggestions and do all such things as he deems right and proper for inducing the parties to come to a fair and amicable settlement of such matters.

77C. A committee may confer with any persons as to anything affecting the settlement of an industrial matter and may summon any person before it for the purpose of conference or of giving evidence. Such summons shall be signed by the chairman or by the registrar.

Every person so summoned shall be bound to attend upon such summons and shall for disobedience thereto be liable to a penalty not exceeding fifty pounds.

77D. A committee may—

- (a) conduct its proceedings in public or private as it may think fit;
- (b) adjourn the proceedings to any time or place;
- (c) exercise in respect of witnesses and documents and persons summoned or giving evidence before it, or on affidavit, the same powers as were by section one hundred and thirty-six of the Parliamentary

New secs.

77A-77G.

Notes of
proceedings.

Inquiry by
committee.
cf. Act No.
17, 1912,
s. 32.

Persons
may be
summoned.

Conduct
of pro-
ceedings.

cf. *Ibid.*

s. 34.

Dec. 25, 1943.

Parliamentary Electorates and Elections Act, 1902, conferred on a committee of elections and qualifications, and the provisions of the said section shall apply in respect of the proceedings of the committee:

Provided that unless a person raises the objection that the profits of an industry are not sufficient to enable him to pay the wages or grant the conditions claimed, no person shall be required without his consent to produce his books, or to give evidence with regard to the trade secrets, profits, losses, receipts, and outgoings of his business, or his financial position.

Where a person raises such objection he may be required, on the order of the chairman, to produce the books used in connection with the carrying on of the industry in respect of which the claim is made, and to give evidence with regard to the profits, losses, receipts, and outgoings in connection with such industry, but he shall not be required to give evidence regarding any trade secret, or, saving as hereinbefore provided, his financial position. No such evidence shall be given without his consent except in the presence of the committee alone, and no person shall inspect such books except the chairman or an accountant appointed by the committee, who may report to the committee whether or not his examination of such books supports the evidence so given, but shall not otherwise disclose the contents of such books. Such accountant shall, before acting under this paragraph, take an oath not to disclose any matter or evidence before the committee relating to—

trade secrets;

the

the profits or losses or the receipts **No. 25, 1943.**
and outgoings of any em-
ployer;

the books of any employer or wit-
ness produced before the com-
mittee; or

the financial position of any em-
ployer or of any witness,

and if he violates his oath he shall be
liable to a penalty not exceeding five
hundred pounds.

77E. At any meeting of a committee—

- (a) the chairman shall preside;
- (b) a quorum of the committee shall be three comprising the chairman, a representative of the employers and a representative of the employees;
- (c) each member, except the chairman, shall have one vote; and where the votes for and against any matter are equal, the chairman may with the consent of all the members or if so specially authorised by the commission decide the question;
- (d) if any of the members, other than the chairman, are absent from a duly convened meeting of a committee, the chairman may, together with such members as may be present, proceed to hear any matter before the committee.

**Proceedings
at meetings.**
cf. Act No.
17, 1912,
s. 36.

77F. Where agreement has been reached by **Awards as
to part
of claims.**
the members of a committee as to some matters at issue before it an award may, if the committee so decides, be made as to such matters and, unless all the members consent to the chairman deciding any particular matter as to which no agreement can be reached, such matter may be reserved for the further consideration of the committee or may be referred forthwith to the commission for determination or for directions.

No. 25, 1943.

Awards and orders.Sec. 78.
(Interven-
tion by
Crown.)Subst.
sec. 80.Legal rep-
resentation.

77G. Any award or order of a committee shall, after settlement by the registrar in the manner prescribed, be signed by the chairman:

Provided that upon any settlement the registrar may submit any question of law to the commission for its determination.

Subject to this section the registrar shall publish the award or order, when signed, in the Gazette, and shall notify the parties in the prescribed manner.

- (d) by omitting from section seventy-eight the words "the conciliation commissioner" and by inserting in lieu thereof the words "a conciliation commissioner";
- (e) by omitting section eighty and by inserting in lieu thereof the following section:—

80. (1) In proceedings before the commission, if the matter is an industrial matter no party shall be represented by a barrister or a solicitor except by the consent of the commission.

(2) In proceedings before a conciliation commissioner or a committee no party shall, except by consent of the conciliation commissioner or the committee, as the case may be, and all the parties, be represented by a barrister or a solicitor or by a person who has qualified for admission as a barrister or a solicitor.

(3) Nothing in this section shall preclude any permanent employee of the Crown from appearing on behalf of the Crown in any proceedings before the commission, a conciliation commissioner or a committee; but in any case where the permanent employee of the Crown so appearing is a barrister or a solicitor, the Crown shall be deemed to have consented to the representation of any other party to the proceedings by a barrister or a solicitor and the consent of the commission, conciliation commissioner, or committee, as the case may be, to such representation shall not be refused.

- (f) by omitting section eighty-one;

7. The Principal Act is further amended—

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(a) by inserting next after section eighty-eight the following new sections:—

88A. The commission or a committee shall not award any conditions nor fix rates of wages or other payments for employees of the Crown less favourable than the conditions granted or the wages paid or other payments made to employees (other than employees of the Crown) who are doing substantially the same class of work, but the fact that employment is permanent or that additional privileges are allowed to employees of the Crown shall not of itself be regarded as a substantial difference in the nature of the work.

Further
amendment of
Act No. 2,
1940.
New secs.
88A, 88B.

Crown
employees.

In this section the expression "employees of the Crown" includes employees of the Government or of any department of the Government or of any of the following corporations, that is to say—

The Commissioner for Railways.

The Commissioner for Road Transport and
Tramways.

The Commissioner for Main Roads,

The Metropolitan Meat Industry Commis-
sioner,

The Maritime Services Board of New
South Wales,

The Metropolitan Water, Sewerage and
Drainage Board,

The Water Conservation and Irrigation
Commission,

Board of Fire Commissioners of New South
Wales,

The Hunter District Water Board, and

The Hospitals Commission of New South
Wales.

This

Dec. 25, 1943.

**Restriction
as to
contracts
in certain
cases.**

This section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

88B. (1) Where by an award a price or rate is fixed for persons performing work in any industry the commission or a committee may, on an application or reference to it in that behalf, prescribe by award that no contract to which this section applies shall be valid unless the consent of the commission or the committee is obtained.

(2) If any person acting or purporting to act in the execution of any contract which is rendered invalid by this section, performs any work for which by an award a price or rate has been fixed for persons performing such work, then for the purposes of this Act the person so performing such work shall be deemed to be an employee, and the person with whom the contract so rendered invalid was made shall be deemed to be the employer of such employee.

(3) This section shall apply to any contract made by two or more persons being or alleging themselves to be partners working in association in any industry whereby such persons undertake the performance of work for which by an award a price or rate has been fixed for persons performing such work, and under which such persons or any of them engage personally in the performance of the work whether with or without the assistance of other persons employed by them.

(b) by inserting next after section ninety the following new section:—

**New sec.
90A.**

**Incorpora-
tion of
variation in
reprint of
awards.**

90A. Where an award made or deemed to have been made under this Act has been varied (whether such variation was made before or after the commencement of the Industrial Arbitration (Amendment) Act, 1943) the Government Printer shall, if and when directed so to do by the registrar, reprint the award in a form certified as correct by the registrar.

8. The Principal Act is further amended—

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(a) by inserting in subsection one of section ninety-two after the word "Act" the words "or by the conditions of a permit issued under section eighty-nine of this Act";

(b) by inserting at the end of the same subsection the words "or permit as the case may be";

(c) by omitting from subsection two of the same section the words "within six months after such money has become due";

(d) by omitting from the same subsection the words "to the registrar or";

(e) by inserting in the same subsection after the words "price or rate" the words "which became due during the period of twelve months immediately preceding the date of the application (where such person is still in the employment of such employer at that date) or within the last twelve months of the employment with such employer (where the employment was terminated before the date of the application)."

An application under this subsection made after the termination of the employment shall be made not later than six months after the date of such termination.

(f) by omitting from the same subsection the words "The registrar or magistrate" and by inserting in lieu thereof the words "The industrial magistrate";

(g) by inserting at the end of the same subsection the following words: "Where, in any proceedings under this section, it is made to appear that the employer has committed a breach of section ninety-three or section ninety-six of this Act, the industrial magistrate may, in addition to any order made under this section, impose any penalty which he might have imposed in proceedings for a penalty under section ninety-three or section ninety-six of this Act as the case may be";

(h)

Further
amendment
of Act No. 2.
1940.
See. 92.
(Recovery
of wages.)

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(h) by omitting from subsection three of the same section the words "within the said period of six months";

(i) by inserting next after subsection four of the same section the following new subsection:—

(4A) In any case where the person authorised to take proceedings under subsection two or subsection three of this section is a person employed to do any work for which the price or rate has been fixed by an award or by an industrial agreement made under this Act, the proceedings may, with the consent in writing of such person, be taken by the secretary or other officer of an industrial union concerned in the industry to which such award or industrial agreement relates, in the name and on behalf of such person.

Any amount ordered to be paid in proceedings under this section may be paid to such secretary or other officer and the receipt of such secretary or other officer shall be a sufficient discharge to the employer for the amount mentioned in the receipt.

Any amount so paid to such secretary or other officer (less any costs properly incurred in connection with the proceedings and not paid by the employer) shall be held by him on trust for the person on whose behalf the proceedings were taken.

(j) by omitting from subsection five of the same section the words "final payment made" and by inserting in lieu thereof the words "each payment made after the commencement of the Industrial Arbitration (Amendment) Act, 1943";

(k) by inserting at the end of the same section the following new subsections:—

(6) In every case where an employee has left the employment of an employer without being paid the full amount due to him in respect of such employment, and the employer has been unable, during

during a period of thirty days after the termination of employment, to make such payment because the whereabouts of such employee are unknown to him, and cannot with reasonable diligence be found, such employer shall, forthwith after the expiration of such period, pay the full amount aforesaid to the Under Secretary of the Department of Labour and Industry and Social Services. A receipt issued on behalf of the said Under Secretary for money so paid to him shall be a sufficient discharge to the employer for the amount mentioned in the receipt.

Any amount so paid to the Under Secretary shall be held by him in trust for the employee.

Any employer who fails to comply with this subsection shall be liable to a penalty not exceeding fifty pounds.

(7) Whosoever inserts or causes to be inserted in a newspaper any advertisement in which he offers or seeks employment at a wage lower than the price or rate fixed by any award or industrial agreement applicable to such employment shall be liable to a penalty not exceeding fifty pounds.

The printer or publisher of any newspaper in which any such advertisement is published shall, upon demand, furnish an inspector appointed under this Act or the secretary of the industrial union for the industry to which the award or industrial agreement relates, with the name and address of the person who inserted, or caused to be inserted, such advertisement.

(8) (a) In any contract for the performance of any work involving the supply for reward of any musical entertainment, the consideration for such contract shall not be less than a sum sufficient to pay to each person engaged in the performance of such work, or the supply of the musical entertainment, the price or rate fixed by any award or industrial agreement for a person performing such work or so engaged.

(b)

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(b) Any person who offers, enters into, or is in any way concerned with a contract which does not comply with paragraph (a) of this subsection or who knowingly performs work or engages or takes part in a musical performance in pursuance of a contract which does not comply with that paragraph shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding twenty pounds.

(9) (a) Where any female performs work under any award or industrial agreement, whether made before or after the commencement of the Industrial Arbitration (Amendment) Act, 1943, which does not prescribe rates of pay for female employees, such female pending variation of such award or industrial agreement in consequence of such female work being performed shall be paid the price or rate prescribed by that award or agreement for employees engaged on the class of work performed by her. Nothing in the foregoing provisions of this subsection shall be construed as a direction that any variation of the award or industrial agreement shall necessarily be made.

(b) This subsection shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

9. The Principal Act is further amended—

Further
amendment
of Act No. 2,
1940.
Sec. 93.
(Penalty
for breach
of award.)

(a) (i) by omitting from subsection one of section ninety-three the words "the registrar or an industrial magistrate may order him to pay a penalty not exceeding fifty pounds" and by inserting in lieu thereof the words "he shall be liable to a penalty not exceeding one hundred pounds. Proceedings for the recovery of any such penalty shall be taken before an industrial magistrate";

(ii) by omitting from subsection two of the same section the words "Where on making such order" and by inserting in lieu thereof the words "Where in proceedings for the recovery of any such penalty";

(iii)

(iii) by omitting from the same subsection the ~~No. 25, 1943.~~ words "the registrar or magistrate" and by inserting in lieu thereof the words "the industrial magistrate";

(iv) by omitting from subsection three of the same section the words "Where an order is made under subsection one of this section against any person, and the registrar or magistrate" and by inserting in lieu thereof the words "Where a penalty is imposed upon any person under subsection one of this section and the industrial magistrate";

(v) by omitting from the same subsection the words "any order made" and by inserting in lieu thereof the words "any penalty imposed";

(vi) by omitting from subsection four of the same section the words "The costs of any such proceedings shall be paid by the complainant if the order is not made, and by the defendant if the order is made" and by inserting in lieu thereof the words "The industrial magistrate may award costs to either party and assess the amount of such costs";

(b) by inserting next after section ninety-three the ~~New sec.~~ ^{93A.} following new section:—

93A. (1) Any proceedings under section ninety-two or section ninety-three of this Act ~~against unincorporated clubs.~~ against an employer which is an unincorporated club may be taken against the secretary or the managing committee of the club as nominal defendants on behalf of the club and its members.

(2) Any property of the club, whether in the hands of trustees or not, shall be available to answer any order made or penalty imposed in such proceedings.

(c) (i) by inserting after paragraph (b) of section ~~Sec. 95.~~ ^{(Penalty for unlawful} ninety-five the following new paragraphs:— ^{dismissal.)}

(b1) has informed any person that a breach or a suspected breach of an award

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award or industrial agreement has been committed by such employer; or

(b2) has engaged or contemplates being engaged in any public or political activity (not being an activity which interferes with the performance of the duties of his employment); or

(ii) by omitting from the same section the words "or a similar position" and by inserting in lieu thereof the words "position or a position not less advantageous to the employee than that held by him prior to such dismissal, injury or prejudice";

(d) (i) by inserting in subsection one of section ninety-six after the word "factory" the words "or place";

(ii) by inserting in the same subsection after the words "written up in ink." the words "It shall be a sufficient compliance with the foregoing provisions of this subsection if such records are kept by means of some mechanical device of a type approved by the commission; such daily records shall be preserved in good order and condition and kept available for inspection for a period of eighteen months";

(iii) by omitting from the same subsection the words "to a penalty not exceeding ten pounds" and by inserting in lieu thereof the words "for the first offence to a penalty not exceeding twenty pounds, and for a second or subsequent offence to a penalty not exceeding fifty pounds";

(iv) by inserting after the same subsection the following new subsection:—

(1A) Every person who aids, abets, counsels, or procures or by act or omission is in any way directly or indirectly knowingly concerned in the commission of any offence under subsection one of this section, shall be

cf. Act No.
39, 1912,
s. 97 (5).

Sec. 96.
(Time
sheets and
pay sheets.)

be deemed to have committed that offence **No. 25, 1943.**
and shall be liable to the penalty provided
in that subsection.

(v) by inserting at the end of subsection two of
the same section the words—

It shall be a sufficient compliance with the
provisions of this subsection if the employer
exhibits and keeps exhibited the copy of the
award as last reprinted under section 90A
of this Act.

(e) by inserting after section ninety-six the following new section:— **New sec. 96A.**

96A. (1) Where in any proceedings under section ninety-two, section ninety-three or section ninety-six of this Act it appears that the award or industrial agreement referred to in the application or information, as the case may be, is not the award or industrial agreement appropriate to the proceedings and that some other award or agreement by which the employer is bound is appropriate to such proceedings, the industrial or other magistrate or justices may amend the application or information and proceed to deal with the matter as though proceedings had been instituted under the application or information as so amended: **Power to amend. cf. Act No. 27, 1902, s. 65 (3).**

Provided that where the defect or variance appears to the industrial or other magistrate or justices before whom such proceedings are taken to be such that the employer has been thereby deceived or misled such industrial or other magistrate or justices may, upon such terms as he or they think fit, adjourn the hearing of the case to some future day.

(2) Nothing in this section shall be construed as limiting the operation of section sixty-five of the Justices Act, 1902-1940.

(f) (i) by omitting from subsection one of section **Sec. 119.** one hundred and nineteen the words “or **(Enforce-
any penalty” and by inserting in lieu **ment of
thereof the words “or where an order is
orders.)** made under subsection (4A) of section
twenty-eight**

No. 25, 1943.

twenty-eight of this Act for the refund of any premium, fee, gift, reward, bonus or consideration or the value thereof";

(ii) by omitting from the same subsection the words "or of such penalty" and by inserting in lieu thereof the words "or for the amount of the value of such premium, fee, gift, reward, bonus or consideration";

(g) by inserting at the end of section one hundred and twenty-one the following new paragraph:—

The provisions of section eighty-two of the Justices Act, 1902-1940, shall, mutatis mutandis, apply to and in respect of any penalty adjudged to be paid by any such conviction and the persons against whom the conviction is made.

(h) by inserting next after section one hundred and twenty-one the following new section:—

121A. If any person shall, during any proceeding before an industrial magistrate, be guilty of contempt, such person may be punished in a summary way by such industrial magistrate by fine not exceeding forty shillings or by imprisonment for a period not exceeding fourteen days.

(i) by inserting at the end of section one hundred and twenty-two the following words:—

Provided that where such penalty has been recovered upon complaint or information of the secretary or other officer of an industrial union, the commission or an industrial or other magistrate or justices may order that the penalty or any part thereof be paid to such union;

(j) by omitting from section one hundred and twenty-eight the words "conciliation commissioner" and by inserting in lieu thereof the word "chairman";

(k) by omitting section one hundred and twenty-nine and by inserting in lieu thereof the following new section:—

129. (1) The commission or a member thereof and every person authorised in writing by the commission or the registrar or a committee may at any time during working hours enter any building

Sec. 121.
(Recovery
of
penalties.)

New sec.
121A.
Contempt.
cf. Act No.
27, 1902,
s. 152.

Sec. 122.
(Penalties
to be paid
to Consoli-
dated
Revenue.)

Sec. 128.
(Power of
entry and
inspection.)

Subst.
sec. 129.

Power of
entry.
cf. Act No.
13 of 1904
(C'wth),
s. 41.

building, mine, mine working, ship, vessel, place **No. 25, 1943.**
or premises of any kind wherein or in respect of
which any industry is carried on or any work is
being or has been done or commenced or any
matter or thing is taking or has taken place in
relation to which any industrial dispute is pend-
ing, or any award has been made, or any offence
against this Act is suspected, and may, to the
extent and for the purposes named in the
authority, inspect and view any work, material,
machinery, appliance, articles, book or document
therein.

(2) No person authorised under subsec-
tion one of this section shall have any authority
to enter a private dwelling-house, or the land
used in connection therewith, unless some
manufacture or trade in which labour is
employed is carried on therein.

(3) Every person who hinders or
obstructs the commission or a member thereof or
any person authorised as aforesaid in the exer-
cise of any power conferred by this section shall
be liable to a penalty not exceeding fifty pounds.

10. The Principal Act is further amended by omit-
ting from subsection one of section one hundred and
thirty-one the words "shall not be subject to the provi-
sions of this Act other than Parts XIV and XV" and by
inserting in lieu thereof the words "shall be subject to the
provisions of this Act other than Part VI" but no award
relating to any such rural industry shall take effect
unless the commission after public inquiry to which the
Crown shall be a party certify to the Governor that the
employers generally in the industry are then presently
able to pay the wages set out in the award and will in all
probability be able to continue to pay such wages during
the currency of the award from the proceeds of the sale
of the products of the industry together with any subsidy
payable in respect thereof after making due allowance
for a fair return upon the capital invested therein, a fair
remuneration for the work and supervision of the
employer, and all other proper outgoings. Upon the
publication of such certificate in the Gazette the award
shall have effect in such industry but not sooner.

Further
amendment
of Act No.
2, 1940.
Sec. 131.
(Rural
workers.)

11.

**Government Guarantees and Meat Industry
(Amendment) Act.**

No. 25, 1943.

Further amendment of Act No. 2. 1940. **11.** The Principal Act is further amended in the manner and to the extent set forth in the Schedule to this Act.

(Revision.)

SCHEDULE.

Sections, headings, etc.	Amendment.
Sec. 2	(a) Omit the figures 77 and insert the figures and letter 77G. (b) Omit the words "Conciliation Commissioner" wherever appearing and insert the words "Conciliation Commissioners."
Part II, Heading	Omit the words "Conciliation Commissioner" and insert the words "Conciliation Commissioners."
Part II, Division 2, Heading	Omit the words "Conciliation Commissioner" and insert the words "Conciliation Commissioners."
Sec. 16	Omit the words "subsections six and" and insert the word "subsection."
Part III, Heading	Omit the words "Conciliation Commissioner" and insert the words "Conciliation Commissioners."
Part III, Division 2, Heading	Omit the words "Conciliation Commissioner" and insert the words "Conciliation Commissioners."